

AG Contract No.: KR06-0235 TRN
ADOT ECS File No.: JPA 05-123
Project No.: CM-GIL-0(017)A
TRACS No.: **SS608 01C**
Project: Video Wall for Traffic
Management Center

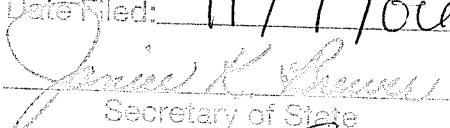

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF GILBERT

THIS AGREEMENT is entered into November 7th, 2006, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF GILBERT acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and 28-334 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project is within the boundary of the Town has been selected by the Town; the field survey of the project has been submitted to the Federal Highway Administration ("FHWA") for its approval.
5. The interest of the State in the project is in the acquisition of expended Federal funds for the use and benefit of the Town and to authorize such Federal funds for the project by Federal law and regulations.
6. The Town, in order to obtain Federal funds for the construction of the project, is willing to provide Town funds to match Federal funds in the ratio required or as finally fixed and determined by the Town and FHWA.

NO. 28535A
Filed with the Secretary of State
Date Filed: 11/7/06

Secretary of State
By: 

7. The work embraced in this Agreement is for the purchase equipment and to install a video wall for the Town's Traffic Management Center, hereinafter referred to as the "Project". The State and City will be responsible for jointly administering the purchase of this equipment. The estimated cost of the Project is as follows:

Total Estimated Project Cost (TRACS No.: SS608 01C)	\$ 193,000.00
Federal-aid Funds @ 94.3% of \$193,000.00 (capped)	\$ 181,999.00
Estimated Town Funds @ 5.7% of \$193,000.00	\$ 11,001.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Approve the Project if such project funds are available by FHWA for the Project. Be the designated authorized agent for the Town and, through the State's Procurement Process, advertise for, receive and open bids with the aid and consent of the Town and the FHWA.

c. Upon execution of this Agreement, coordinate with the Town regarding the specifics of the equipment to be ordered by the State to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

d. Instruct the vendor to deliver equipment directly to the Town for final acceptance and to bill the Town directly. The State will reimburse the Town with capped Federal funds up to \$193,000.00 within thirty days (30) after receipt and approval of an invoice for equipment purchased under this Agreement. Therefore, the Town agrees to set aside funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

e. Not be obligated to maintain said equipment, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The Town shall:

a. Designate the State as authorized agent for the Town, if such project is approved by the FHWA and project funds are available.

b. Be responsible for any overage should costs exceed the maximum Federal funds available for the Project. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Coordinate with the State during the procurement process of the Project.

d. Install the video equipment purchased under this Agreement and maintains all improvements provided by this Project for the entire design life of the system and equipment.

e. Be responsible for unforeseen conditions or circumstances increase the cost of said work, such that a change in the extent or scope of the work called for in this Agreement becomes necessary, be obligated to incur and will pay for said increased costs.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this Agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the equipment purchased and to install a video wall covered by this Agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This Agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised as a result of termination under this paragraph.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

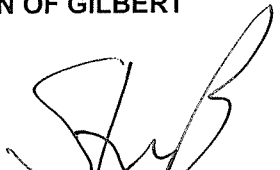
Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
FAX (602-712-7424

Town of Gilbert
Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296-3401
(480) 503-6170

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF GILBERT

By 
STEVEN M. BERMAN
Mayor

STATE OF ARIZONA

Department of Transportation

By 
DALE BUSKIRK, DIVISION DIRECTOR
Transportation Planning Division

ATTEST:

By 
CATHY TEMPLETON
Town Clerk

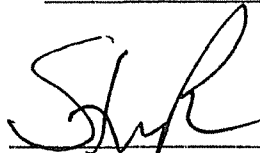
RESOLUTION NO. 2723

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the Common Council of the Town of Gilbert, Arizona, has determined it is in the best interest of the Town to enter into an intergovernmental agreement with the State of Arizona, Arizona Department of Transportation for the purpose of defining responsibilities for the purchase of equipment and to install a video wall for the Town's Traffic Management Center, TRACS: SS608 01C.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, that the Mayor be, and is hereby directed to execute the intergovernmental agreement between the State of Arizona and the Town of Gilbert, AG Contract #KR06-0235TRN(JPA 05-123).

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 10th DAY OF October, 2006.



Steven M. Berman, Mayor

ATTEST:



Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:




Curtis, Goodwin, Sullivan, Udall, & Schwab, PLC

Town Attorneys

By: Susan D. Goodwin

I hereby certify the above foregoing Resolution No. 2723 was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on October 10, 2006, and that quorum was present thereat and that the vote thereon was 5 ayes and 0 nays and 0 abstentions. 2 Council members were absent or excused.

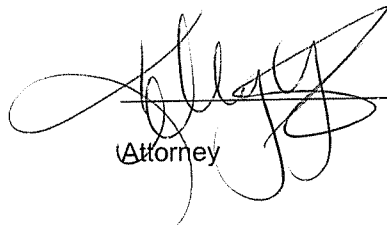

Catherine Templeton, Town Clerk
Town of Gilbert

ATTORNEY APPROVAL FORM

FOR THE TOWN OF GILBERT

I have reviewed the above referenced Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF GILBERT, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 11th day of October, 2006.



Attorney



TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR06-0235TRN (**JPA 05-123**), an Agreement between public agencies, i.e., The State of Arizona and The Town of Gilbert, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: October 31, 2006

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:985345
Attachment